

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4561 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JASHBHAI B PATEL SINCE DECEASED THROUGH HEIRS & L.R.

Versus

COLLECTOR

Appearance:

MR MI PATEL for Petitioners

MR BD DESAI, AGP for Respondent No. 1, 3

RULE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/05/2000

ORAL JUDGEMENT

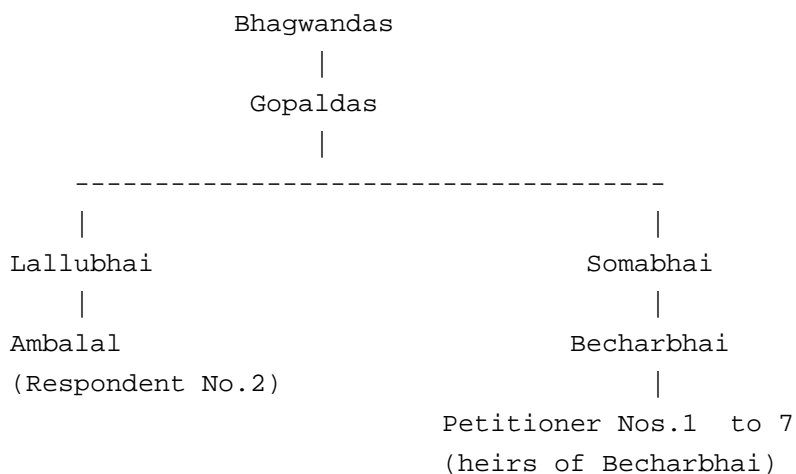
In this petition under Article 227 of the Constitution, the petitioners have challenged the judgment and order at Annexure "D" passed by the Additional Chief Secretary (Appeals), Revenue Department of the State Government rejecting the petitioners' revision application No. SRD/Land/751 of 1986 whereby the Additional Chief Secretary confirmed the order dated 10.6.1985 of the Collector, Kheda (Annexure "C") and the order dated 18.1.1985 of the Deputy Collector, Nadiad (Annexure "B"). These orders were purportedly passed on the ground that the new tenure land running in the name of Ambalal Lallubhai was transferred in favour of

Becharbhai Somabhai in contravention of the provisions of Bombay Tenancy and Agricultural Lands Act, 1949 and the Bombay Land Revenue Code.

2. The facts leading to filing of this petition, as averred by the petitioners, briefly stated, are as under:-

2.1 One Gopaldas Bhagwandas Patel was the tenant-cum-owner of the land bearing Survey No. 269 of village Sangali, Taluka Kapadwanj, District Kaira. On his death, the said property alongwith other properties were inherited by the joint Hindu family consisting of his two sons Lallubhai and Somabhai. Respondent No. 2 is the son of Lallubhai the elder brother in the family; and Somabhai, father of petitioner Nos. 1 and 3 to 7 and husband of petitioner No. 2 was the younger brother in the family.

2.2 The pedigree (family tree) is as under :-



2.3 The entire property was entered, on the death of Gopaldas in the name of Lallubhai and on his death in the name of respondent No. 2. On coming into force of the Tenancy Act, the purchase price of the land was fixed and paid by the joint family. However, the land continued to be shown in the name of respondent No. 2 being the elder member in the family.

2.4 The partial partition of the properties of the joint family took place and the land in dispute came to the share of Becharbhai Somabhai, predecessor of the petitioners and he continued to be in possession of the said land till his death in the year 1986.

2.5 The Prant Officer initiated proceedings under the Tenancy Act on the ground that the land was of a new tenure and was owned by respondent No. 2, while it was

cultivated by Becharbhai Somabhai; and as such there was violation of the condition of holding. The Prant Officer passed order dated 18.9.1974 holding that there was no breach of terms of tenancy and, therefore, he ordered that the proceedings be dropped.

2.6 Becharbhai Somabhai made an application for getting the land in question converted into old tenure land. Contrary to the order of the Prant Officer passed on 18.9.1974, the Deputy Collector held in the said proceedings that there is breach of the terms of tenancy and, therefore, he directed forfeiture of the land in dispute to the Government. The only ground given for holding that there was a breach of tenancy was that the name of Becharbhai was not mentioned in village form No.7/12 and consequently there was transfer of land from Lallubhai to Becharbhai without permission of the Collector.

2.7 The Collector dismissed the appeal filed by deceased Becharbhai against the aforesaid order of the Deputy Collector. The third respondent dismissed the revision application filed by the petitioners against the aforesaid order of the Collector. Hence, this petition.

3. At the hearing of this petition, the learned counsel for the petitioners has submitted that a bare look at the family tree of the parties shows that the petitioners are the direct descendants of Gopalbhai Bhagwandas in whose name the land in question stood earlier. It is submitted that when the petitioners have inherited the land by succession which ultimately resulted into the family partition (partial partition), there was no reason for the respondent authorities for not recognising this legal right in favour of the petitioners and that the respondents were duty bound to enter the names of the petitioners in the revenue record and to consider the petitioners' application for permission to convert the new tenure land into old tenure land.

4. On the other hand, Mr BD Desai, learned AGP has submitted that the authorities have rightly passed the impugned orders and that since the petitioners' name did not figure in the revenue record they could not be treated as owners of the land in question without prior permission of the Collector.

5. In response to a query from the Court, the learned AGP was not in a position to state under which provision of the Bombay Land Revenue Code or the Tenancy

Act permission of the Collector was required for transmission of property rights upon death of the original owner when such transmission is in accordance with law and when all the other heirs of the original owner are agreeable. Even in the present proceedings, Respondent No. 2 Patel Ambalal Lallubhai, uncle to brother of the grand-father of the present petitions has not raised any objection to the reliefs being granted in favour of the petitioners.

6. In the facts and circumstances of the case and in view of the fact that Becharbhai was the grand-son of Gopaldas in whose name the land originally stood and that the name of Becharbhai was entered in the revenue record because Lallubhai was the elder son of Gopaldas, it does not mean that the rights of Becharbhai in the joint family property could be whittled down by the action of the respondent authorities.

7. In view of the above discussion, the petition is allowed. The impugned orders at Annexures "B", "C" and "D" are hereby quashed and set aside and respondent No. 1 is directed to consider the petitioners' application for converting the new tenure land into old tenure land in accordance with the relevant Government Resolutions and circulars and legal provisions in this behalf but the

Collector shall not raise any objection about the property rights of the petitioners in land admeasuring A.1-G.25 bearing Survey No. 269 of village Singali, Taluka Kapadwanj, District Kheda.

Rule is made absolute to the aforesaid extent with no order as to costs.

May 5, 2000 (M.S. Shah, J.)
sundar/-